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HUMAN RIGHTS COMMITTEE

Fifty-first session

SUMMARY RECORD OF THE 1327th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 8 July 1994, at 10 a.m.

Chairman: Mr. ANDO

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The meeting was called to order at 10.15 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Second periodic report of Togo (CCPR/C/63/Add.2; HRI/CORE/1/Add.38) (continued)

1. The CHAIRMAN invited members of the Committee to put additional questions in relation to sections II and III of the list of issues.

2. Mr. AGUILAR URBINA remarked that against the background of the troubles of the past few years, alluded to in the core document, the references by Togo to measures adopted to guarantee the right to life (art. 6 of the Covenant) were excessively succinct and laconic. The latest report by Amnesty International referred to grave violations of that right in Togo, documenting some 50 extrajudicial executions and assassinations in 1993. Equally well-documented instances of disappearances, as well as torture or other cruel, inhuman or degrading treatment or punishment (art. 7), further underscored the disparity between the impressive and courageous efforts being made to develop legislation on human rights and the realities of the situation in the country.

3. Paragraph 19 of the second periodic report (CCPR/C/63/Add.2) stated that, under Togolese law, the death penalty might only be imposed in exceptional circumstances, and in the case of "intentional homicide" on "crimes against the security of the State". He submitted that, even when deemed intentional, the crime of homicide could take a variety of forms, and might be qualified by aggravating or mitigating circumstances; Togolese law appeared to be silent on that point. As for so-called "crimes against the security of the State", he invited the Togolese delegation to comment on the reported extrajudicial execution of one person because of "gestures" suggesting that he was favourable to a coup d'état, and on other allegations of a similar nature made by bodies whose good faith was acknowledged by the delegation.

4. Concerning article 14 of the Covenant and the independence of the judiciary, it seemed that his earlier remarks on the subject had been misunderstood by the head of the Togolese delegation. He had not challenged the presence before the Committee of the Adviser to the Constitutional Chamber of the Supreme Court; he had merely sought to express his disquiet at hearing an adviser on constitutional matters defend the stand taken by the State in respect of alleged violations. He asked whether Mr. Assouma would disqualify himself if he had to pronounce on allegations against the judiciary. He added that many of the organic laws required to implement the Constitution seemed not yet to exist.

5. Mrs. CHANET explained that duties in Paris had delayed her arrival at the session. She had, however, familiarized herself with the content of earlier meetings.

6. Like the previous speaker, she sought a clear explanation of the grounds for imposing the death penalty in Togo, and a definition of "crimes against the security of the State". Non-governmental organizations, as well as the

Special Rapporteur of the Commission on Human Rights, had denounced extrajudicial executions in Togo, and she shared other members' anxiety in that respect. The Togolese army was described in the Constitution as "republican" - a term which for her was rich in implications of universal accessibility, service to the nation in its entirety, including the political opposition, and conduct beyond reproach; that was why she had been so disturbed by the admission that allegations of extrajudicial executions by members of those forces had not resulted in prosecutions.

7. On the subject of detention, she asked whether non-judicial, administrative detention was permitted in Togo and, if so, under what circumstances. She inquired about the success of the National Human Rights Commission in putting an end to the practice of incommunicado detention and asked, with reference to the Committee's general comment on article 7 of the Covenant, whether the names of detainees and their places of detention were entered in a central register available to persons concerned. She was troubled by the apparent linkage established between the length of pre-trial detention and the severity of the penalty risked by the detainee: that implied denial of the basic presumption of innocence. The sole purpose of pre-trial detention should be to further the due process of law; she asked whether that was acknowledged in the relevant texts in Togo.

8. With regard to peaceful demonstration, she had been surprised to hear only about the restrictions and penalties imposed to prevent and sanction abuse in that connection. How was the right of peaceful assembly (art. 21 of the Covenant) actively guaranteed?

9. On the subject of freedom of expression, she refuted the notion that the need for or practice of censorship was somehow linked to the stage of a country's development. Censorship, which had an obviously repressive purpose, constituted a violation of the Covenant wherever it occurred; if there was any link between its prevalence and other phenomena, it was with the degree of violation of other rights: the more violations, the more censorship. In the case of Togo, she inquired as to the fate of the newspaper La Tribune des Démocrates after 15 April 1993; sought confirmation of and comments on reports that a number of Togolese newspapers were produced in Benin; and asked whether the perpetrators of the bomb attack on a major publishing office on 25 May had been identified.

10. Mr. WENNERGREN said that his grave misgivings at the time of consideration of the initial report of Togo had been somewhat allayed by positive developments such as the establishment of the National Human Rights Commission. Five years later, it seemed that some progress had indeed been made towards true democracy and the establishment of the rule of law.

11. Many questions remained, however. As an example, he pointed to the discrepancy between the provisions of article 9 (3) of the Covenant, which stated that "Anyone arrested or detained on a criminal charge shall be brought promptly before a judge ..." and article 15 of the Togolese Constitution, which seemed to place the onus of seeking judicial intervention on the person detained. More generally, he submitted that the statement in article 50 of the Constitution that "international instruments relating to human rights" would become "an integral part" of the Constitution was by no means sufficient

to ensure that persons authorized by law to exercise judicial power in Togo would be familiar with all the provisions of the International Covenant on Civil and Political Rights, including article 9 (3).

12. The picture of the situation in Togo painted by the Government's report and by various non-governmental organizations respectively was very different. It seemed, in fact, that torture, maltreatment, extrajudicial killing, arbitrariness and impunity still prevailed and that there was an appalling gulf between the laws and the reality. Lack of resources could not be the only explanation: the true cause must be deep and fundamental.

13. He had before him a document entitled "Strategy of Terror", produced by what were stated to be the National Human Rights Commission, the Human Rights Initiatives Group and the Togolese League of Human Rights, covering the situation up to 5 October 1993. The authors' declared intention was to send out a signal of alarm, and the contents were indeed alarming; he wished to know whether the Commission had actually participated in the drafting of that document. If such were the case, that would certainly be a convincing demonstration of the Commission's independence; he nevertheless felt constrained to inquire about the current functioning, composition and resources of that body.

14. He said that he would particularly welcome the Togolese delegation's comments on allegations of impunity for members of the armed forces and police when the provisions of the Constitution and of the Covenant were violated. Such impunity, if it existed, could explain the frequency of violations and the rarity of prosecutions. In his view, the issue of impunity was crucial to a proper understanding of the situation in Togo.

15. Mrs. EVATT, referring to question II (d) on complaints of extrajudicial executions, disappearances, torture or other inhuman or degrading treatment or punishment and arbitrary detention, remarked that the Togolese delegation had so far not replied to inquiries concerning the investigation of such complaints or reports thereon. She recalled that the Special Rapporteur of the Commission on Human Rights had reported that the Government had provided no information in response to specific allegations. She appealed to the delegation for any details whatsoever of any investigation in that connection or of any intervention by the National Human Rights Commission or any other national agency to prevent or to provide a remedy for the violations in question. She reiterated her earlier request for information concerning the circumstances of the death, some time between 12 and 14 February 1994, of Mr. Gaston Aziaduvu Edeh, an elected deputy. What legal requirements existed to ensure that the investigation of such incidents actually took place?

16. While freedom of assembly and of peaceful demonstration were certainly guaranteed under the Togolese Constitution and covered by provisions of the Penal Code, there seemed to be some uncertainty as to the actual law on the matter and the authority to deal with related issues and inquire into and report on incidents such as that of 25 January 1993, when 19 persons had been killed by the armed forces in a demonstration said to have been peaceful. Was it of no consequence to the Government that people were killed in the street and their deaths left uninvestigated?

17. Mr. PRADO VALLEJO commented on the particular need for thorough dialogue between the Committee and the Togolese delegation; like other members, he was dismayed at the discrepancy between theoretical democratization and apparent progress in guaranteeing respect for human rights, and the number of demonstrable violations of those rights, notably by the forces of order. Such forces must, he stressed, be kept in check by the civil authority; their intervention in the country's political life was inadmissible; the State appeared to be virtually incapable of putting an end to their rampages. He noted with special concern allegations that a great measure of the responsibility for the chaotic situation lay with the Presidential Guard. How could the Head of State allow that? The Togolese delegation was a high-calibre one; he felt sure that its members could enlighten the Committee in many ways. It was his own feeling that, since 1990, cases of extrajudicial executions, disappearances, torture or other inhuman or degrading treatment or punishment and arbitrary detention had increased, rather than diminished, in Togo. And what was the value of elections when politicians involved were arrested, kidnapped or even killed while their gaolers and executioners went unpunished?

18. Systematic, unchecked impunity was, he submitted, the key to the situation; the State itself was primarily to blame. What had the Ministry of Human Rights or the National Human Rights Commission actually done to remedy matters? What could they do?

19. While paragraph 75 of the report acknowledged that incitement to tribal hatred was a threat to peace, paragraph 58 of the core document acknowledged that such incitement had led to people taking the law into their own hands. That was surely a domain where educational and social programmes were desperately needed; he asked whether such programmes existed or were envisaged.

20. Mr. NDIAYE noted from paragraph 42 of the report that aliens could only be expelled or extradited from Togo by virtue of a decision in accordance with the law and must be given the opportunity to defend themselves. He inquired which authority was competent to take such decisions, to whom appeals should be addressed and whether the latter would have a suspensive effect. Paragraph 57 of the report indicated that the Togolese judicial system was rather slow, mainly because of a shortage of judges; moreover, information received by the Committee confirmed that although in theory the right to appeal existed in Togo, citizens were reluctant to avail themselves of such remedies because of the lengthy delays involved. He inquired what measures the Togolese Government was contemplating to rectify the situation. The report contained scant information on the situation of religious sects in Togo and he would welcome further details in that regard. Lastly, he sought clarification concerning paragraph 76 of the report, since he failed to understand how racist, regionalist and xenophobic acts could be dealt with under the same article of the Penal Code and moreover be considered as constituting attacks on the internal security of the State. In his view, racism was a far more serious matter than regionalism.

21. Mr. ASSOUMA (Togo) said that he wished first of all to clear up a misunderstanding that had arisen between himself and Mr. Aguilar Urbina concerning the independence of the judiciary. It was not the role of th

Committee to pass judgement on the Togolese Government, nor that of his delegation to present its defence. The members of the delegation, in their capacity as experts who had participated in the drafting of the report, were merely supposed to reply to any queries the members of the Committee might have. He explained that the report had been prepared by an Inter-Ministerial Committee, composed of representatives of the Ministry of Human Rights, the Ministry of Foreign Affairs and the Ministry of Justice. Furthermore, at the time of the drafting of the report he had been Attorney-General at the Court of Appeal.

22. As to the query regarding the National Human Rights Commission and its role in the preparation of a document entitled "Strategy of Terror", he explained that the Commission's mandate had expired in 1991 and had not been renewed, given the political situation at the time. The Chairman and members of the Commission had fled the country, seeking exile in Benin; although some of them had subsequently returned to Togo, the Chairman, a supporter of the opposition party, had remained in exile with the Commission documents and files in his possession. It was now reported that having set up an office in Benin, he was issuing refugee papers to persons seeking asylum - a duty which hardly fell within the competence of the Commission. Undoubtedly the document in question had therefore been drafted by the members in exile and not by the National Human Rights Commission as recognized by the State, whose activities had been officially suspended in 1990. Nonetheless, it was worthwhile noting that in the interests of the population, the Government had recently issued a decree enabling the Commission office based in Togo to deal with routine business pending the enactment of amended legislation for the full resumption of its activities by the new National Assembly.

23. Responding to queries regarding the impunity of members of the army and the security forces, he explained that during the crisis period, on account of the outbreaks of violence, general disturbances and the infiltration of mercenaries, there had been military and civilian casualties both in the Presidential Camp and among supporters of the opposition. Inquiries had been launched to investigate the causes and identify those responsible for such acts, including the alleged assassination of a member of Parliament by the armed forces. However, until the results of such inquiries became available, no action would be taken on such allegations. Since the activities of the National Human Rights Commission had been suspended during that period, citizens had been unable to address complaints to that institution. None the less, some cases had been brought before the courts but had not been heard because all the judges in the country had supported the general strike, flouting their traditional impartiality.

24. Mr. KPOTSRA (Togo), replying to queries regarding the Togolese armed forces, said that some additional clarification on comments made by him during an earlier meeting in connection with articles 147 and 150 of the Constitution appeared necessary. He agreed with Mrs. Chanet that the republican army as described in article 147 remained an ideal that was yet to be realized, as borne out by the new Prime Minister's statement on the subject, which he had brought to the Committee's attention. With respect to Mr. El Shafei's question concerning article 150 and the possibility of recourse to existing agreements of military or defence cooperation during a coup d'état, it remained theoretical.

25. Regarding the failure of the Togolese Government to respond to the allegations of human rights violations in Togo submitted to various monitoring bodies, he pointed out that at the previous session of the Commission on Human Rights the Government had addressed the matter, but that its comments had not been taken into account. By way of justification for the lack of specific information, it had referred to the fact that the whole administrative apparatus of the State had come to a standstill for nearly nine months during the crisis period.

26. Mr. GNONDOLI (Togo), responding to questions regarding obstacles to the full implementation of certain articles of the Covenant during the transitional period, confirmed that on account of the political situation it had not been possible to guarantee Togolese citizens freedom of movement, the right to life, the inviolability of the home and the protection of public and private property. In particular, freedom of expression had been limited since persons voicing an opinion on the political situation would have been prey to attacks by those of a different political persuasion. However, the measures adopted derogating from obligations under the Covenant had been in full conformity with article 4 thereof, even in March 1994 when the country had been placed under military control. Likewise, for a given period of time, the provisions of articles 25 and 26 had not been fully complied with. However, the establishment of the Joint Commission and the introduction of a series of measures to ensure peace and security followed by a day of reconciliation between the army and the people, as well as the Ouagadougou accords, had created the right conditions for the holding of presidential and legislative elections.

27. Incommunicado detention was not practised in Togo at present, although prior to the submission of Togo's initial report instances of such detention had been brought to the attention of the National Human Rights Commission. It had launched a campaign to create awareness among the security forces about the relevant provisions of the Covenant, during which police officers interviewed had admitted that it was sometimes difficult to distinguish between criminal and civil offences, particularly where fraud and breach of trust were concerned. However, detention was not allowed for cases of civil or commercial debt. The death penalty was not imposed for all kinds of homicide. In that connection, he referred members to articles 44 and 45 of the Penal Code, which dealt with homicide accompanied by aggravating and mitigating circumstances, respectively. Only aggravated homicide carried the death penalty, while persons who committed murder under mitigating circumstances were liable to life imprisonment. However, capital punishment was applied for crimes against the security of the State, details of which were given in articles 222, 223, 229 and 231 of the Penal Code and included offences such as trafficking in arms to be used against the State and handing over military intelligence and engaging in other espionage activities with hostile intent towards the State. As to the religious sects existing in the country, in the past certain restrictive measures had been taken against them on account of peculiar customs such as refusal of blood transfusions, non-observance of the hoisting of the national flag and execution of charlatan practices. The ban on their activities had since been lifted. There were no special provisions in the Penal Code governing the practice of administrative detention. Administrative detention was only resorted to in special circumstances such as arrest on the grounds of prostitution or demented

behaviour; however, the consent of the next of kin was always required. As to queries concerning the expulsion and extradition of aliens, the provisions of the Constitution were quite clear with regard to the former. Persons whose extradition was requested by another State could bring their cases before the courts and the extradition procedures could not be completed pending a decision on the merits of the case. He endorsed the Committee's comments to the effect that censorship also existed in the industrialized world; however, it was more severe in the developing countries, where there were virtually no private television and radio channels. He looked forward to the introduction of appropriate legislation designed to remedy that situation.

28. Mr. ASSOUMA (Togo) confirmed that in the past religious sects had been banned in Togo, the Government recognizing only Catholicism, Protestantism and Islam. However, since the process of democratization had commenced, the followers of such sects had been able freely to manifest their beliefs in public. With regard to administrative detention, he added that persons arrested by the police and subsequently certified as insane by a doctor were committed to State-run psychiatric institutions by decision of the competent judicial authority. Furthermore, in the past prostitutes arrested by the police had been released after payment of an appropriate fine, but they were now obliged to undergo a medical examination and were thus detained while waiting to appear before a panel of doctors. He admitted that at one time administrative detention had been practised by the police, gendarmeries, departmental prefects and even the traditional chiefs, who commanded great respect in the rural areas. One of the initial tasks of the National Human Rights Commission had therefore been to draw the attention of the prefects and traditional chiefs to the fact that they were not competent to order administrative detention and inform citizens in rural areas of their rights in that connection. Furthermore, the police were obliged to register the dates on which persons were arrested and released. Detainees should also undergo a medical examination following their arrest and prior to their release, but that obligation was not always complied with. Police registers did exist and were subject to regular verification. Due account would be taken of the Committee's recommendations on the subject, and he was confident that once the National Human Rights Commission resumed its activities the situation would improve.

29. The CHAIRMAN invited members to make concluding observations concerning the second periodic report of Togo.

30. Mr. NDIAYE said that Togo was emerging from a serious social and political crisis during which the State itself had been virtually non-existent. All forms of authority had been challenged, beginning with that of the President of the Republic. At the present time, the situation seemed to be returning to normal, and Togo had acquired important legal machinery for the protection of human rights. There was a new Constitution, although the necessary legislation for its implementation had not yet been elaborated.

31. For the sake of national reconciliation, Togo should carry out an investigation into the human rights violations that had occurred during the transitional period, such as extrajudicial executions, disappearances and torture. Action should be taken to compensate for the harm done and to identify those responsible. The armed forces should be reorganized so as to

ensure that they did not become involved in political struggles. The judiciary should be strengthened and the National Human Rights Commission should be given a larger budget to enable it to carry out its task.

32. He stressed the need to put an end to censorship and to strengthen equality between men and women. Furthermore, a larger variety of people should be able to enter the civil service. Exiles must be allowed to return to the country. With regard to inter-ethnic relations, he said that State agents should receive further training with a view to ensuring conduct that promoted national integration. Efforts must also be made to improve the implementation of the various international human rights instruments to which Togo was a party.

33. Mr. WENNERGREN said it was clear from the information provided by the Togolese delegation that the strikes and unrest which had occurred in Togo had made it difficult for those entrusted with the task of maintaining law and order to discharge their responsibilities.

34. He expressed the hope that Togo would soon be able to overcome the difficulties facing it. However, one problem was that the Head of State did not have a good human rights record and relied on the armed forces. Perhaps the new Government would be able to make him conform to the Constitution. It was for the Government and the Prime Minister to see to it that the various parties concerned functioned in a democratic manner.

35. In conclusion, he expressed the hope that the new Government would be able to come to grips with the situation and bring about the changes which most Togolese citizens desired.

36. Mr. AGUILAR URBINA said that the transition to democracy in Togo was now beginning and he hoped that some important legal instruments would bear fruit in the near future. However, it must be noted that the same President was in power. It was for the authorities to take the first steps toward greater democracy and to open the door to dialogue. If they did not do so, there would be no enjoyment of human rights. He came from a region which had had similar problems and it was only as a result of the determination of all parties concerned to enter into a dialogue that changes had been achieved.

37. With regard to article 4 of the Covenant, he recalled that the Committee had been informed of the fact that a curfew had been in force in Togo over a period of two or three days. That constituted an exceptional measure and the Committee should have been immediately informed of it through the Secretary-General, as provided for in the Covenant, irrespective of the short duration of the curfew. In conclusion, he said that he was still greatly concerned at what he considered to be a chaotic situation in Togo.

38. Mr. POCAR thanked the Togolese delegation for the replies given and its description of the human rights situation obtaining in Togo. However, he felt obliged to express his disappointment over the deterioration of the human rights situation in that country. The disturbances that had taken place were due in part to forces linked to the Government. In that connection, he referred to such massive violations of human rights as executions, torture, and press and television censorship. Of even greater concern was the fact

that no investigation had been carried out and that an attempt had been made to justify the state of affairs by referring to a protracted strike that had taken place the previous year in the country.

39. The Committee had been informed that the Ministry of Human Rights had been set up in 1992 to strengthen the activities of the National Human Rights Commission. According to the current report, the Ministry received a number of petitions relating to the protection of human rights. However, that was surely the task of the National Commission. Members had also been informed that the Ministry had a mandate to implement the Government's human rights policy. He had the impression that the Ministry had taken over the functions of the National Commission, which would have difficulty in resuming its activities.

40. He hoped that the new Government, which had a difficult task before it, would be able to establish institutions, adopt laws and change practices so that the situation in the country fully reflected the constitutional provisions regarding human rights.

41. Mr. PRADO VALLEJO said that the Committee had received information on the situation in Togo which enabled it to take note of the difficult period of transition towards democracy in that country.

42. However, certain facts should be made clear so that the Togolese delegation would convey to its Government the Committee's views on how best to protect the rights enshrined in the Covenant. Full democracy did not yet exist in Togo, nor was there full separation of the powers of the various organs. It was an ineluctable obligation of States parties to the Covenant to take steps to put an end to human rights violations. Within the context of that responsibility, there was another ineluctable obligation to investigate such violations with a view to punishing the guilty. In the case of Togo, it was clear that the National Human Rights Commission had an obligation to protect the human rights of citizens.

43. Mr. EL SHAFEI said that one of the Committee's tasks was to convey to the Government of the State party the meaning of the articles of the Covenant and to determine whether the State was implementing those articles. In order to do so, it was necessary for the Committee to ascertain the conditions prevailing in the country concerned.

44. Since 1990, the Committee had witnessed the efforts being made by Togo to draft a new Constitution and to establish a Ministry of Human Rights. During the transitional period, certain operations had hindered the move towards democracy. Tension had remained high and given rise to a general strike and clashes between followers of different movements. He noted that the Ministry of Human Rights and other bodies had been unable to carry out their functions and that the general strike continued to hinder the judicial and other machinery in the country.

45. He hoped that when the Committee next came to study the situation in Togo, the Government would have taken measures to reconcile the various forces in the country and to ensure the implementation of the Covenant.

46. Mrs. CHANET said that during the so-called transitional period in Togo there had been many human rights abuses, including extrajudicial executions committed by public authorities. The perpetrators of those abuses should be traced, punished and rendered harmless so that the country would not again have to experience such a situation.

47. While a multi-party system was emerging in many African countries, that did not seem to be the case in Togo, which was regrettable because recent developments in the country, such as the establishment of the National Human Rights Commission, had been encouraging.

48. With regard to the statement made by the Togolese delegation concerning the level of technical expertise of the country's personnel, she thought that Togo should not hesitate to call on the United Nations Centre for Human Rights for the necessary technical assistance.

49. Mr. FRANCIS said that he, too, wished to thank the Togolese delegation for its cooperation with the Committee. In the social and political situation which now prevailed, the Togolese authorities should bear in mind, firstly, that there was a need for national reconciliation and, secondly, that the issue of human rights was now the focus of attention not only within the United Nations system but throughout the world. As Mr. El Shafei had pointed out, the Committee was not a court; rather, its role was to evaluate, from a study of the report, whether Togo was fully discharging its obligations under article 2 of the Covenant. While he was sure Togo was well acquainted with the rights and freedoms provided for under the Covenant, he would ask it to give more thought to its obligations under that article.

50. Shortage of personnel in the judiciary was a problem which affected many developing countries, and he suggested that the jurisdiction of the National Human Rights Commission could be extended, and more weight given to its decisions. In particular, the Commission could help to remedy the shortage of judges by taking on some of their workload. It was up to the Togolese authorities to reconstitute the Commission as quickly as possible.

51. He was sure that the Togolese delegation, after listening to the views expressed by the Committee, would be better able on the next occasion to submit a report which members would find more acceptable.

52. Mr. SADI said the dialogue with the delegation of Togo had been very useful. The oral replies had been candid, and had done much to make good any omissions in the written report. He hoped that the delegation would transmit the Committee's final comments to its Government, and would also give them as much publicity as possible, thus ensuring some interaction between Government and people in regard to human rights. He would also like to see more publicity given to the Covenant, and in particular, would like to invite Mr. Assouma, in view of his important position in the judiciary, to encourage the application of the Covenant by the courts. There should also be official condemnation of the extrajudicial executions which the delegation had admitted had occurred, and action should be taken against the militia responsible. Some protection should also be extended to victims, and steps taken to see that there were no more secret detentions.

53. Mrs. EVATT also thanked the delegation for the efforts it had made to respond to the Committee's questions and comments.

54. Togo still had a long way to go to establish due respect for human rights and for the rule of law. While it was true that there had been problems caused by political and ethnic differences, the Committee could not but be concerned about the role played by the armed forces, which seemed able to act with impunity and above the law. Their interventions to resist the process of democratization seemed to be prompted more by political factors than by the legal requirements imposed by the Constitution. While it was true that acts of violence had been committed right across the political spectrum, respect for the rule of law should start with the agents of the State.

55. Nevertheless, Togo should also be given credit for those aspects of the report which were positive. In 1992, a new Constitution had been adopted, under which rights were guaranteed, and there had been a move towards a multi-party system. Legal reforms had been introduced, and more were promised for the future. Institutions such as the National Human Rights Commission had been set up, although they had yet to show that they could be effective in bringing about change.

56. A review of the role and composition of the army was crucial. All alleged abuses should be investigated, and the problem of extrajudicial executions should be given priority, whatever Togo's difficulties might be. There had been a certain lack of openness about the real situation in the country which had not helped the discussion. Once the necessary investigations had been carried out, they should be acted upon. The judiciary and prosecution agencies should be totally independent of political interference.

57. The use of force by law enforcement agencies should be strictly controlled, and there should be clear rules governing detention and the bringing of prisoners before the judicial authorities. Human rights violations should be made an offence, irrespective of who had committed them. Stricter human rights guarantees, and equal access to justice for all, would help to overcome ethnic tensions and rivalries. Electoral laws should be constantly reviewed, to ensure that elections were free and fair.

58. It would appear that there was a need for specific government machinery to ensure equal rights for women, and equal participation by women in Togolese society. Measures should be taken to abolish customary laws which denied them equality and to put an end to practices such as female circumcision, trafficking in women and violence against women, which were harming women in Togo as well as in many other countries.

59. She hoped that the next dialogue between Togo and the Committee would show that further advances had been made.

60. Mr. MAVROMMATIS said there was no doubt that Togo faced more problems than many other countries which had come before the Committee, problems chiefly due to ethnic strife. There was also no doubt that there had been a

retrogression since the time of the country's initial report and that many serious violations of fundamental human rights, including violations of the right to life, had occurred.

61. Despite that retrogression, however, he believed that there was enough political will to bring the country back on the right path and to achieve national reconciliation. The recent elections, which had resulted in one of the opposition parties obtaining a large number of seats in the National Assembly, augured well for the future. It was now for the Government to gain the confidence of the opposition, and not vice versa, if there was to be a real improvement in the political situation. The delegation should take the Committee's recommendations back to its Government, and help to ensure that they were implemented.

62. Togo already had more human rights institutions in place than most countries, but until now those institutions had not been able to function properly. They should be strengthened, and, more important, divorced from the executive, so that they could operate independently. He pointed out that since Togo had signed the Optional Protocol, it was in a position to benefit from a great deal of assistance from the Committee in regard to individual communications. He urged it to prepare mechanisms to put into immediate effect any recommendations the Committee might make on such communications. If that were done, he believed there would be a definite improvement in the human rights situation in the country, which at the moment left much to be desired.

63. Mr. BRUNI CELLI said he, too, wished to thank the Togolese delegation for all the additional information it had provided, and for the serious effort it had made to explain many aspects that were not clear in the report.

64. However, he was still left with many doubts. The Committee had not been given a clear and frank explanation of the discrepancy between the large body of human rights legislation that had been drawn up and the actual human rights situation in the country. He himself could not accept the explanation that the state of emergency justified such violations, and nor could the Committee. There had been many allegations concerning concentration camps, cases of torture, disappearances and extrajudicial executions, the absence of due legal process, and the lack of independence of the judiciary, and doubts had been cast on the practical effectiveness of the institutions that had been set up.

65. In his view, the report was merely formalistic: it quoted the Constitution and legal instruments, but gave no indication of the true situation. That was bad, not only for the State, which ended by having a distorted picture of reality, but also for the Committee, which was left with a feeling of frustration. He urged that the next report of Togo should provide the true facts, since only thus could there be a genuine dialogue on the subject of implementation of the Covenant.

66. He called upon the members of the delegation, in view of the important positions they held in their country, to ask their Government to make a greater effort to see to it that the Togolese people were able in practice to enjoy all the rights to which they were entitled.

67. The CHAIRMAN thanked the delegation of Togo for the efforts it had made to respond to the many difficult questions raised by members of the Committee. Although the written report had not been entirely satisfactory, that had been largely compensated for by the oral explanations given.

68. Countries in many parts of the world had difficulty in finding ways to ensure that peoples of different backgrounds lived in harmony, and Togo was not unique in that respect. He hoped that the Committee, and also the Centre for Human Rights, would be able to give Togo practical help in overcoming its problems. Dialogue would continue, and he trusted that on the next occasion Togo would be in a position to present a better report on the situation.

69. Mr. ASSOUMA (Togo), responding to points raised, stressed that in his country's newly elected Assembly the opposition party was in the majority. Regarding a point raised by Mr. Pocar, the National Human Rights Commission had originally been set up under a single-party system; however, following the change in government, the law governing the composition of the Commission needed to be amended to reflect the new political situation, which was why the President had not been able to reconstitute the Commission immediately. In reply to Mr. El Shafei, he trusted that with a new National Assembly and a new Government, Togo would achieve genuine change.

70. He thanked the Committee for the spirit of courtesy and frankness it had shown during consideration of his country's report. He was only too aware of Togo's shortcomings in implementing the provisions of the Covenant and of the gap between theory and practice where human rights were concerned. He pointed out, however, that the recent developments in the country had been welcomed by many foreign Governments, and that France, in particular, which had suspended cooperation with Togo during the political disturbances, had now announced that that cooperation was being resumed.

71. The Togolese authorities were doing their best to ensure respect for human rights and for the rule of law, but could only achieve that aim with the support of the international community. Togo therefore welcomed the opportunity for dialogue with the Committee, and wished to assure members that all the comments they had made would be transmitted to the Government for further action.

72. The CHAIRMAN, thanking the representative of Togo for that assurance, said that Togo's next periodic report had originally been due on 23 August 1995: however, the Committee had decided to put that date back to 31 December 1995.

The meeting rose at 1 p.m.